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REMARKS/ARGUMENTS

This paper is intended as a full and complete response to the Office Action dated May 26, 2005, having a shortened statutory period for response set to expire on August 26, 2006.

Claims 1 and 20 are amended in the Application.

Claim 19 has been withdrawn in the Application

Claims 1-37 are pending in the Application.

I. Double Patenting

Claims 1-37 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-16 of US patent No. 6,900,173.

Applicant hereby files a terminal disclaimer to overcome the rejection.

Reconsideration of the rejection is respectfully requested in view of the amended Claims.

II. Claim Rejections 35 USC § 103

The Office Action rejected Claims 1-6, 8-25 and 27-37 under 35 USC § 103(a) as being anticipated by *Lumpur, K* (2001).

Lumpur, K refers to a supplement that includes organic grasses, phytonutrients, mushrooms, sea algae, adaptogenic herbs, superfoods, probiotics, detoxifiers, digestive enzymes, and select vitamins and minerals.

Applicant's Application consists of a protein beverage that has elements not disclosed or inferred to by *Lumpur, K*. Digestive enzymes such as pepsin, lactase, alpha-g, glucoamylase, invertase, malt diastase, pectinase, xylanase, betain, and trypsin are never mentioned in *Lumpur, K*. These digestive enzymes are included to aid in digestion. Sea plants such as blue green algae and sea vegetables are never mentioned in *Lumpur, K*. These sea plants

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are included to aid in removing impurities in the bloodstream. Fiber such as quinoa, millet, buckwheat, kamut, corn, rice, wheat, barley, oats, amaranth, bulgur and rye are never mentioned in *Lumpur, K*. Fiber has long been recognized as one of the best food ingredients for maintaining bowel regularity and preventing constipation. Nor does *Lumpur, K* discuss fluids selected from water, coffee, tea, artificial drinks, alcoholic fluids, non-alcoholic fluids, fruit juice, vegetable juice, blends of juice, juice and water blends, concentrates of juice, soda, and sports drinks.

Applicant's Application teaches a perioperative multivitamin protein beverage mixture for promoting an anabolic state in a person. The protein beverage has a digestive enzyme, an amino acid, a sea plant, a flavoring, a vitamin, a fiber, and an ingestible fluid, the combinations of which are not taught or disclosed in *Lumpur, K*.

Claims 2-6, 8-25 and 27-37 depend upon independent Claim 1, and therefore includes all of the limitations thereof. Since Applicant believes that independent Claim 1 is patentably distinct from *Lumpur, K*, Claims 2-6, 8-25 and 27-37 are patentably distinct from *Lumpur, K* as well. Applicant believes no new subject matter has been added. Reconsideration of the rejection to the Claims in view of the remarks is respectfully requested.


The Office Action rejected Claims 7 and 26 under 35 USC § 103(a) as being unpatentable over *Lumpur, K* (2001) as applied to Claims 1-6, 8-25, and 27-37 above, and further in view of *Bell et al.* (US 5,968,896 A).

Claims 7 and 26 depend upon independent Claim 1, and therefore includes all of the limitations thereof. Since Applicant believes that independent Claim 1 is patentably distinct from *Lumpur, K* in view of *Bell et al.*, Claims 7 and 26 are patentably distinct from *Lumpur, K* in view of *Bell et al.* as well. Applicant believes no new subject matter has been added. Reconsideration of the rejection to the Claims in view of the remarks is respectfully requested.

Applicant appreciates the Examiner's time and attention to this matter. Applicants believe Claims as now provided are in condition for allowance. Reconsideration of this application is respectfully requested. The Applicant invites the Examiner to contact the Applicant's representatives (713.403.7411) if any questions concerning this Application arise.

Respectfully submitted,

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